

The Orissa Gazette



EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 661 CUTTACK, WEDNESDAY, MAY 17, 2006 / BAISAKHA 27, 1928

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 1st April 2006

No. 3389-li/1(B)-20/1994-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 22nd March 2006 in Industrial Dispute Case No. 188/1994 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s Janata General Store, Choudhury Bazar, Cuttack and its Workman Shri Jagannath Behera was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 188 OF 1994

Dated the 22nd March 2006

Present :

Shri P. K. Sahoo, O.S.J.S. (Jr. Branch),
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

M/s Janata General Store,
Choudhury Bazar, Cuttack.

.. First Party—Management

And

Shri Jagannath Behera,
C/o. Shri Kishore Charan Majhi,
Labour Colony, Rajabagicha,
Badambadi, Cuttack.

.. Second Party—Workman

Appearances :

For the First Party—Management . . . None

For the Second Party—Workman himself . . . Shri J. Behera

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c)/(d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department, memo. No. 15149(5)-L.E., dated the 24th November 1994 for adjudication and award.

2. The terms of reference may briefly be stated as follows :—

“ Whether the action of the owner of M/s Janata General Store, Choudhury Bazar, Cuttack in terminating the services of Shri Jagannath Behera, Salesman with effect from the 22nd March 1994 is legal and/or justified ? If not, what relief the workman is entitled to ?”

3. By way of this reference workman Shri Jagannath Behera has challenged the legality and justifiability of the action of the management of M/s Janata General Store, Choudhury Bazar, Cuttack (in short the management) in terminating his service with effect from the 22nd March 1994.

Matrix of the necessary facts as bear on the controversy involved in the present case is that the workman was engaged as salesman in the year 1975. He continued to work as such till the date of his termination on the 22nd March 1994. It is categorically averred in the statement of claim that although he had rendered continuous uninterrupted service for years together but the management without any rhyme or reason terminated his services without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). After such termination he approached the management for his re-engagement in service but to no effect. When all his efforts for his re-engagement in service under the management bore no fruit, he approached the Labour machinery but the conciliation proceeding initiated by the district Labour Officer, Cuttack ended in failure and the matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. While seeking Industrial adjudication the workman has prayed for his reinstatement in service with back wages. Hence, the reference.

4. The management on the other hand was set *ex parte* and the *ex parte* hearing commenced on the 19th March 2001.

During *ex parte* hearing the workman has clearly supported and corroborated the facts averred in the statement of claim. He has categorically stated that he was working under the management in the year 1975 as Salesman and he continued to work as such till he was refused employment in the year 1996. Before refusal of such employment, the management

had not given any notice or notice pay and retrenchment compensation. He has now, therefore, claimed for his reinstatement in service with back wages. The evidence given by the workman in this respect has not been challenged by the management during the evidence. In absence of any rebuttal evidence, I find no cogent reason to disbelieve the evidence of the workman. The settled position of law is that the provisions of Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*. After carefully examining the evidence given by the workman and keeping in view of the above legal position, the termination having been made in violation of the mandatory provisions of Section 25-F of the Act in my opinion is void *ab initio*. In that view of the matter the action of the management in terminating the services of the workman with effect from the 22nd March 1994 was illegal, unjustified and against the mandate of Section 25-F of the Act. In such premises the workman is entitled to the relief of reinstatement.

5. Hence, it is ordered—

ORDER

That the action of the owner of M/s Janata General Store, Choudhury Bazar, Cuttack in terminating the services of Shri Jagannath Behera, Salesman with effect from the 22nd March 1994 is neither legal nor justified. Admittedly the management has not availed the services of the workman with effect from the date of his termination. In that view of the matter, the workman is entitled for reinstatement in service but on the facts and circumstances of this case, as the workman had not worked under the management with effect from the date of his termination he is not entitled to any back wages.

The reference is thus answered accordingly *ex parte*.

Dictated and corrected by me.

P. K. SAHOO
22-3-2006
Presiding Officer
Labour Court
Bhubaneswar

P. K. SAHOO
22-3-2006
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor

N. C. RAY

Under-Secretary to Government